

1 IN THE UNITED STATES DISTRICT COURT
2

FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. CRIMINAL NO. CR-08-1669 JB

6 RICHARD ANTHONY MCKENZIE,

7 Defendant.

8 Transcript of Motions Hearing before The Honorable
9 James O. Browning, United States District Judge, held in
10 Albuquerque, Bernalillo County, New Mexico, commencing on
11 Thursday, May 20, 2010, at 10:31 a.m. and concluding at
12 1:16 p.m. Proceedings recorded by mechanical stenography;
13 transcript produced by computer-aided-transcription.

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1 THE COURT: Good morning, everyone. I appreciate
2 everyone making themselves available to me this morning.

3 All right. The Court will call United States of
4 America versus Richard McKenzie, Criminal Matter 08-1669, JB.
5 Counsel will enter their appearances.

6 MR. MARTINEZ: Damon Martinez and Sammy Hurtado on
7 behalf of the United States.

8 THE COURT: Mr. Martinez, Mr. Hurtado, good morning
9 to you.

10 MR. PADILLA: Good morning, Your Honor. Alonzo
11 Padilla on behalf of Mr. McKenzie, who also appears.

12 THE COURT: Mr. Padilla, Mr. McKenzie, good morning
13 to you.

14 THE DEFENDANT: Good morning.

15 THE COURT: All right, Mr. Martinez, don't let me
16 make this too hard for you. I know you're in trial, so when
17 you have to go, just say so, and we'll stop and come back and
18 do it another time.

19 MR. MARTINEZ: Your Honor, I believe I'm at 16
20 minutes right now. Judge Conway told me, in front of the jury,
21 he'll start without me in 20 minutes.

22 THE COURT: All right. Well, we'll stop -- We'll
23 stop or you just go when you've got to go, and we'll shut down
24 and pick it up again.

25 Mr. Padilla, you have filed a couple of motions, so

1 I'll let you sort of dictate how we use this time. What do you
2 think needs to be discussed first?

3 MR. PADILLA: I think Mr. McKenzie's request that he
4 receive a new attorney, and he wants to address the Court on
5 that, I think. I think, obviously, if the Court grants that
6 request, then I guess the other motion becomes moot in terms of
7 the motion to continue the trial setting.

8 THE COURT: All right. Well, this may get you back
9 to your hearing a little sooner than you need, but why don't I
10 hear from you first, Mr. Martinez, on the motion to -- for
11 Mr. Padilla to withdraw as counsel.

12 MR. MARTINEZ: Your Honor, the United States'
13 position on that is that I really am not in a position to give
14 an opinion either way. I'm not familiar with the internal
15 dynamics of the relationship. I understand that Mr. Padilla's
16 representation is that they've reached an impasse where they
17 cannot communicate effectively. With that understanding,
18 obviously, the United States wants to go to trial and will be
19 prepared to go to trial on Monday.

20 THE COURT: All right. Well, why don't I do -- if
21 this is all right with you, Mr. Martinez and Mr. Hurtado, if it
22 would be all right if y'all go ahead and go back to your trial,
23 I use this time to talk to Mr. McKenzie and Mr. Padilla, and
24 then we'll work with -- Ms. Wild will work with you to maybe
25 set up a time this afternoon, or something, we can get together

1 again with you on the other motions, if that's necessary.

2 MR. MARTINEZ: Thank you, Your Honor. If I may ask,
3 how do you want us to have communication with your court?

4 THE COURT: Ms. Wild will come to you. So we'll just
5 do it the old fashion way. We'll come find you.

6 MR. PADILLA: Your Honor, I'll be available during
7 lunch, if you decide to do it during lunch, or at the end of
8 the day, whatever works best for everyone.

9 THE COURT: Okay. Well, I appreciate it.

10 MR. MARTINEZ: Thank you, Your Honor, for working
11 with our schedule today.

12 THE COURT: Appreciate it. We weren't sure whether
13 you -- whether you were in this trial -- whether the trial was
14 going on in front of Judge Conway or Judge Parker, and so --

15 MR. MARTINEZ: That was two weeks ago.

16 THE COURT: Two weeks ago? Okay. Well, thanks for
17 making yourself available.

18 MR. MARTINEZ: Thank you, Your Honor.

19 MR. HURTADO: Thank you, Your Honor.

20 THE COURT: Y'all have a good morning.

21 (Mr. Martinez and Mr. Hurtado left the courtroom.)

22 (Portion sealed from Government in separate file.)

23 (Court stood in recess at 11:01 a.m. and resumed at
24 1:11 p.m. as follows, in open court:)

25 THE COURT: Good afternoon, everyone. All right.

1 We'll go back on the record in United States versus Richard
2 McKenzie.

3 As you can tell, after taking this back to chambers
4 and giving it some thought, I thought the best thing to do was
5 to grant the motion to withdraw, and so I have done that. And
6 I guess at this stage there are two motions. The first one has
7 three requests in it. The first one is a motion to continue
8 the trial setting.

9 Mr. Martinez, given where we are now, that portion of
10 the motion, do you have a position you wish to state on that
11 now?

12 MR. MARTINEZ: Our position is that we're prepared to
13 go to trial, but I don't think it's realistic for a new
14 attorney, who is appointed today or tomorrow, to be prepared
15 for trial next Monday.

16 THE COURT: All right. So you have no opposition to
17 me going ahead and granting that portion of the motion?

18 MR. MARTINEZ: No, Your Honor. And I'm assuming that
19 the Court would put it on the trial docket for June?

20 THE COURT: For June?

21 MR. MARTINEZ: Yes, Your Honor.

22 THE COURT: I will. All right. With that, is there
23 anything further needs to be said on that, Mr. Padilla?

24 MR. PADILLA: No, sir. But I will cooperate with
25 whoever the new counsel is and provide them everything that I

1 have and sit down and talk to him or her regarding the case.

2 THE COURT: All right.

3 MR. MARTINEZ: Your Honor, if I may ask, concerning
4 the motion that was -- concerning the other part of the motions
5 that were before the Court, there's also a sealed matter that
6 the United States has filed. Was anything withdrawn
7 concerning -- I assume that nothing was withdrawn before
8 Mr. Padilla has been taken off this case.

9 THE COURT: No. But do you see any problem with me
10 going ahead and granting the motion to quash the subpoena,
11 because we're not going to have a trial next week?

12 MR. PADILLA: Yeah, I have been in contact with the
13 Amtrak attorney, in fact, left a message that I was in court,
14 advised him that we would know this afternoon if he needed to
15 advise the witness whether or not to appear, so I'll definitely
16 call him back and say that's no longer necessary.

17 THE COURT: No longer necessary?

18 MR. PADILLA: As far as quashing the subpoena, that's
19 a whole different matter. A new attorney may want to go ahead
20 and issue a subpoena later. I withdraw it only because the
21 case is going to be continued.

22 THE COURT: All right. So you're going to withdraw
23 the subpoena?

24 MR. PADILLA: For Monday, yes. For Monday.

25 THE COURT: So does that take care of that issue for

1 the time being, or do you want to leave your motion on file?
2 If there's no motion out there, do you want to withdraw your
3 motion without prejudice?

4 MR. MARTINEZ: I would want to leave my motion on the
5 record, Your Honor. I do not want it withdrawn.

6 MR. PADILLA: Just for the record, I don't think that
7 was a sealed motion.

8 MR. MARTINEZ: That it wasn't?

9 THE COURT: It says "Sealed" in your heading, but I'm
10 not sure it was actually filed sealed.

11 MS. WILD: It was.

12 THE COURT: Oh, it was?

13 MR. MARTINEZ: And I would ask that it be continued
14 to be sealed.

15 THE COURT: All right. So I will grant the first
16 portion of the defendant's opposed motion to continue the trial
17 setting. I will not rule on the request for a Franks hearing
18 or a request to reopen the suppression hearing until new
19 counsel's involved, but I'll put an order -- a short opinion
20 and order granting the request to continue the trial, and then
21 we'll just leave the other -- those -- kind of the rest of that
22 motion and then the Government's motion to quash the
23 defendant's subpoena -- we'll just leave that for another day,
24 until we get counsel into the case.

25 All right. Is there anything else that we need to

1 discuss while we're together? Is there anything else that I
2 can do for you?

3 Mr. Martinez?

4 MR. MARTINEZ: No, Your Honor.

5 MR. PADILLA: No, sir.

6 THE COURT: Mr. Padilla?

7 All right. All right. Well, thank you for your
8 service on this case, Mr. Padilla.

9 And I appreciate everybody making themselves
10 available to me.

11 All right. We'll be in recess. Y'all have a good
12 afternoon.

13 MR. MARTINEZ: Thank you, Your Honor.

14 (Court stood in recess at 1:16 p.m.)

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2 UNITED STATES OF AMERICA

3 DISTRICT OF NEW MEXICO

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5 I, Danna Schutte Everett, RPR, CCR, CRR, Official
6 Court Reporter for the State of New Mexico, do hereby
7 certify that the foregoing pages constitute a true
8 transcript of proceedings had before the said Court held
9 in the City of Albuquerque, New Mexico, in the matter
10 therein stated.

11 In testimony whereof, I have hereunto set my hand on
12 this 19th day of January, 2011.

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